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12. Master and Servant (§ 286*)—Injury to Servant—Negligence—Evidence.—Evidence in an action for injuring a servant while engaged in taking down defective parts of a pier forming part of a railroad for purposes of repair held sufficient to go to the jury on the question of negligence.

[Ed. Note.—For other cases, see Master and Servant, Dec. Dig. § 286.*]

13. Master and Servant (§ 286*)—Injury to Servant—Contributory Negligence—Evidence.—The question of contributory negligence, as well as of negligence, where the servant in repairing a pier in a railroad was injured, is for the jury; the evidence being such that reasonable men might well differ thereon.

[Ed. Note.—For other cases, see Master and Servant, Dec. Dig. § 286.*]

NEWPORT NEWS & OLD POINT RY. & ELECTRIC CO. *v.*
NICOLOPOOLOS.

Jan. 14, 1909.

[63 S. E. 443.]

1. Street Railroads (§ 28*)—Operation—Rights in Streets—Rights of Public.—A street railway company operating on a public highway has no property interest in the highway, but the mere right to use it in common with the public, and its rights in the use of the road are not superior to those of the public therein.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. § 39; Dec. Dig. § 28.*]

2. Street Railroads (§ 90*)—Operation—Speed of Cars.—Unless expressly permitted, the speed of a street car should be no greater than is reasonable and consistent with the customary use of the highway with safety.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. § 191; Dec. Dig. § 90.*]

3. Street Railroads (§ 90*)—Operation—Lookouts.—It is the duty of a motorman operating a street car on a public highway to keep a lookout for persons or vehicles on the highway.

[Note.—For other cases, see Street Railroads, Cent. Dig. § 191; Dec. Dig. § 90.*]

4. Action on the Case (§ 4*)—Pleading.—In an action for injuries caused by being struck by a street car, a general allegation that the defendant negligently ran its car into plaintiff's wagon while he was attempting to cross its track was insufficient as a count in trespass on the case, where there was no averment showing in what particular the defendant failed to perform its duty.

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

[Ed. Note.—For other cases, see Action on the Case, Cent. Dig. § 42; Dec. Dig. § 4.*]

5. Trespass (§ 40*)—Pleading.—Such allegation was also insufficient as a count in trespass.

[Ed. Note.—For other cases, see Trespass, Cent. Dig. § 80; Dec. Dig. § 40.*]

6. Torts (§ 26*)—Pleading.—In actions of tort, the declaration must state sufficient facts to enable the court to say upon demurrer that, if the facts stated be proved, the plaintiff is entitled to recover.

[Ed. Note.—For other cases, see Torts, Cent. Dig. § 33; Dec. Dig. § 26.*]

7. Appeal and Error (§ 1040*)—Review—Prejudicial Error—Rulings on Pleadings.—In an action for injuries caused by being struck by a street car, the declaration alleged negligence in three counts, the first and second counts charging that defendant was operating its car at an excessive speed, and that the motorman failed to keep a proper lookout, and the third was defective in charging negligence generally, without specifying the particulars thereof. The evidence was such that the jury might have believed that the cause of the accident was neither the excessive speed, nor the want of proper lookout, as alleged in the first two counts, but that it resulted from the failure of the company to exercise due care because of the motorman's want of diligence after he saw the wagon, or because of his incompetency, or the inadequate equipment of the car, or all three combined. Held, that the overruling of the demurrer to the defective count was reversible error, since it was not clear that defendant was not prejudiced by the ruling.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4099; Dec. Dig. § 1040.*]

8. Appeal and Error (§ 843*)—Questions Reviewable.—Objections to rulings on evidence will not be considered on appeal, where the cause must be reversed for other reasons, and the questions involved by the rulings are not likely to arise on another trial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 3338; Dec. Dig. § 843.*]

9. Trial (§ 154*)—Demurrer to Evidence—Statement of Evidence.—Though a demurrer to the evidence must contain a statement of the evidence, the party demurring is not required to have the notes, taken and transcribed by his own stenographer, copied and made a part of the demurrer, but need only have the evidence correctly stated.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 351; Dec. Dig. § 154.*]

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

10. Trial (§ 154*)—Demurrer to Evidence—Statement of Evidence.—The practice of inserting in demurrers to evidence the proceedings at the trial verbatim is not to be commended, on account of the unnecessary expense to litigants and the unnecessary labor it imposes upon courts in the examination of cases, but the old practice of stating the substance of the material oral evidence is the better one, and should be encouraged.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 351; Dec. Dig. § 154.*]

11. Exceptions, Bill of (§ 16*)—Contents—Statement of Evidence.—The practice of inserting in bills of exceptions the proceedings at the trial verbatim is not one to be commended, on account of the unnecessary expense to litigants and the unnecessary labor it imposes upon courts in the examination of cases, but the old practice of stating the substance of the material oral evidence is the better one, and should be encouraged by the courts.

[Ed. Note.—For other cases, see Exceptions, Bill of, Cent. Dig. § 17; Dec. Dig. § 16.*]

12. Trial (§ 154*)—Demurrer to Evidence—Joinder of Issue on.—Where defendant demurs to plaintiff's evidence, plaintiff should not be required to join in the demurrer until a statement of the evidence is set out in the demurrer.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 353; Dec. Dig. § 154.*]

13. Appeal and Error (§ 1064*)—Review—Harmless Error—Invading Province of Jury.—In an action for injuries caused by being struck by a street car, the assumption of the fact that the road on which the accident occurred was a public road was not prejudicially erroneous, where there was no evidence tending to show that such road was not a public road.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4221; Dec. Dig. § 1064.*]

NORFOLK & W. RY. CO. *v.* RHODES.

Jan. 14, 1909.

[63 S. E. 445.]

1. Carriers (§ 318*)—Injuries to Passengers—Res Ipsa Loquitur.—The derailing of a train by collision or otherwise is prima facie evidence of negligence of the carrier as to a passenger.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1311, 1312; Dec. Dig. § 318.*]

2. Carriers (§ 318*)—Injuries to Passengers—Unusual Movement of Train—Res Ipsa Loquitur.—Where the movement of a train so un-

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.